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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,240	08/04/2008	Gunther Van der Borcht	22409-00370-US	1672

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KILPATRICK STOCKTON LLP
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EXAMINER

GETZOW, SCOTT M

ART UNIT	PAPER NUMBER
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3762

NOTIFICATION DATE	DELIVERY MODE
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10/14/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/582,240	Applicant(s) VAN DER BORGHT ET AL.	
	Examiner Scott M. Getzow	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/9/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14, 22-24, 27-31, 33, 37-42, 45-52, 55, 56, 59, 61 and 64-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14, 22-24, 27-31, 33, 37-42, 45-52, 55, 56, 59, 61 and 64-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/17/09, 6/9/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. Claims 1-8,12,22,23,24,27-31,33,38-42,48-52,55,56,59,61,64-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Zilberman et al (5,824,022).

Re claim 1, figure 5 shows a first housing 30, and a second housing 50 that is 'connectable' to the first housing. The term 'connectable' does not serve to limit the structure of the claim, but rather is an intended function of the claimed system. Further, the second housing 50 can be said to be communicatively connected to the first housing 30. Also, as set forth in col. 10:30+ of Zilberman, multiple second housing units can be used, for example, in a classroom. Thus, a plurality of second housings exists, and the structure of the first housing is such that only one of the second housing can be 'connectable' to it if desired. Further, in the claims that mention a 'remote module', other than claim 51 and its dependent claims, the 'remote module' is only inferentially set forth, and not positively claimed. However, even if the remote module were positively claimed, the PC 82, as shown in figure 6, can be considered the remote module for those claims. Clearly a PC has a power supply and a screen, which typically is an LCD display. As shown in figure 4, second housing 50 clearly shows various knobs and buttons, some of which can give a tactile feel to the user. Re claim 51, figure 5 of Zilberman is considered to show a first housing 30 and a remote module 50, which has a user interface. Re claim 65, figure 5 of Zilberman shows a main part 30 and a replaceable part connectable to the main part. The term 'removably connectable' is considered to be intended use, not a structural limitation. Even so, the housing 50 can

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be 'communicatively connectable' to the main part 30. Similar comments can be made for claim 66.

Claim Rejections - 35 USC § 103

2. Claims 9-11,14,37,45,46,47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman et al (5,824,022).

Re claims 9-11,14, although the remote module is not considered to be positively set forth in the claims, nevertheless it would have been obvious to enable wireless communication between the remote module 82 and the second housing 50 or 80, by simply eliminating the wire 84. Doing so would not produce any unexpected results, but rather would allow for a less cluttered arrangement by using RF telemetry to communicate between the remote module 82 and either module 80 or 50. Re claim 37, the second housing 50 could be made to be positionable behind the ear of a patient without any undue effort. The module 50 is stated as being able to be used like a wrist watch, col. 5:37+. Further, the second housing 50 could be placed onto the first housing as that shown by the headpiece assembly 34, as shown in figure 2 of Zilberman. Thus, the second housing could be connected to the first housing in a similar manner to that of the headpiece assembly 34 that is shown being connectable to the first housing 30 in figures 2 and 3a of Zilberman. Re claim 45, the PC is considered to be able to control the functioning of the second housing module 50,80, as well as the first housing circuitry. Further, the intended functioning set forth in claims 45,46 would be routine for the ordinary artisan and not yield an unpredictable result. The skilled

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artisan could allow for the remote module to control the other modules if desired for efficiency purposes. Re claim 47, the term 'mountable' is considered to be an intended use, not a structural limitation. Even so, to have such functionality would not produce any unexpected results. Connecting the modules with a cable could be fairly considered to be that one module was 'mounted' onto another module.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Niketa Patel can be reached on (571) 272-4156. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Scott M. Getzow/
Primary Examiner, Art Unit 3762